**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

**C.W.P. No. 11352 of 2004**
**Date of Decision: Dec. 14,2006**

***Kailash Wati and others ..... Petitioners***

***Versus***

***Union of India and others ..... Respondents***

**Coram: Hon'ble Mr. Justice Ashutosh Mohunta**
**Hon'ble Mrs. Justice Nirmal Yadav**

Present: Mr. M.L.Sharma, Advocate
for the petitioners.

Mr. K.K.Gupta, Addl. Standing Counsel,
Chandigarh Administration
for respondent Nos. 2 and 3.

Ms. Lisa Gill, Advocate
for respondent No.4.

....

***ASHUTOSH MOHUNTA, J.***

The petitioners have prayed for the issuance of a writ in the nature of Certiorari for quashing the notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short `the Act') dated 31.1.1992 (Annexure P-20) and 29.1.1993 (Annexure P-22), Notice under Section 9 (Annexures P-23 & P-24) and Award (Annexure P-26-A) under Section 11 of the Act.

The petitioners case is that although declaration under Section 6 of the Act was issued on 29.1.1993 but the award was announced on 5.3.2003 and therefore as the award has not been announced within a period of two years, hence the same is liable to be quashed.

It has been averred that the petitioners had not obtained any stay order from any Court after the declaration under Section 6 of the Act and, therefore, as far as the petitioners are concerned the award should be deemed to have lapsed.

Written statement has been filed by the Land Acquisition Officer, U.T. Chandigarh, on behalf of respondent Nos. 2 and 3 wherein it has been averred that the aforementioned notifications issued under Sections 4 and 6 of the Act were challenged in as many as 31 writ petitions on the ground that the petitioners had constructed their residential houses over the acquired land and some of the houses were even built after getting the plan sanctioned by the Notified Area Committee. In C.W.P. No. 2126 of 1993 this Court had stayed further proceedings by an interim order dated 24.2.1993. Ultimately, these writ petitions were dismissed with costs by a Division Bench of this Court in C.W.P. No. 2126 of 1993 decided on 22.9.1995. Thereafter, another writ petition i.e. C.W.P. No. 4433 of 1996 was filed under the title ***Ghanpal Singh and others v. Union Territory and others*** in which further proceedings were stayed till further orders. The said writ petition was allowed vide order dated 11.8.1997 and notifications under Sections 4 and 6 were quashed. The Chandigarh Administration then filed a Review Application No. 244 of 1998 which was allowed by a detailed order dated 31.1.2003 and thereby the order dated 11.8.1997 was recalled. In-between, numerous writ petitions were also filed i.e. C.W.P. No. 14804 of 1993, C.W.P. No. 14892 of 1998 and C.W.P. No. 14903 of 1998 and in all these writ petitions initially stay of further proceedings was ordered but ultimately these were dismissed by passing a detailed order dated 30.9.1998. In another bunch of eight writ petitions, further proceedings had been ordered to be stayed but these were also dismissed by a Division Bench of this Court vide order dated 4.8.1998. Thus, the notifications had been challenged in 43 different writ petitions and further proceedings in the land acquisition matter remained under stay from 24.2.1993 to 31.1.2003.

Counsel for the State has given a detailed chart showing the stay granted by this Court in various writ petitions. The detailed particulars are as follows:-

| Sr.No. | Dates | | Particulars |
|---|---|---|---|
| 1. | 31.01.1992 | : | Notification under Section 4 of the Land Acquisition Act was issued. |
| 2. | 29.01.1993 | : | Notification under Section 6 of the Act was issued. |

| | | |
|---|---|---|
| 3. 12.02.1993 | : | Notification under Section 6 of the Act was published. |
| 4. From 13.02.93 to 23.02.1993 | : | **No stay i.e. For 11 days (A)** |
| 5. 24.02.1993 | : | Stay in CWP No. 2126 of 1993 was granted. |
| 6. 22.09.1995 | : | CWP No. 2126 of 1993 was dismissed by Division Bench by passing a detailed order. |
| 7. From 23.09.95 to 02.07.1997 | : | No stay i.e. in the year 1995 = 110 days<br>in the year 1996 = 365 days<br>in the year 1997 = 183 days<br>---<br>= **658 days (B)**<br>--- |
| 8. 03.07.1997 | : | Stay in CWP No.4433 of 1996 was granted. |
| 9. 11.08.1997 | : | CWP No. 4433 of 1996 was allowed by short order without considering the earlier order passed in CWP No.2126 of 1993 (supra). Therefore, Review Application No. 244 of 1998 was filed wherein delay was condoned and the Review Application was heard on merits. |
| 10. 31.01.2003 | : | Review Application No.244 of 1998 was allowed and thereby CWP No. 4433 of 1996 alongwith a bunch of petitions were dismissed. |
| | : | Again C.M.No.7175 of 2003 was filed in CWP No. 4433 of 1996 taking the new plea of the proceedings being lapsed because of the expiry of two years period after the publication of the notification under Section 6 of the Act. |
| 11.01.04.2003 | : | C.M. No. .7175 of 2003 was dismissed as withdrawn. |
| 12.06.02.2003 | : | Notice under Section 9 of the Act was issued and objections invited upto 28.02.2003. |
| 13.05.03.2003 | : | Award was made and pronounced. |
| 14.From 01.02.03 to 04.03.2003 | : | **No stay i.e. For 32 days** (C) |

15. **Total of (A+B+C) = 11+658+32 = 701 days.**

A perusal of the aforementioned facts clearly shows that further proceedings had been stayed between the period from 24.2.1993 to 31.1.2003 except for a period of 701 days. Thus, if the period during which stay was operating is excluded then the award would be deemed to have been passed within a period of two years and would not be hit by the provisions of Section 11-A of the Act. In ***Sangappa Gurulingappa Sajjan v. State of Karnataka and others*** (1994) 4 Supreme Court Cases 145 the Hon'ble Apex Court has held that the period during which the stay order was operative has to be excluded. In ***Devinder Kumar and others v. Union Territory, Chandigarh through Advisor to the Chandigarh Administration and others*** reported as (1999-1) PLR 231 a Division Bench of this Court has held as under:-

> "*The moment the Court grants stay, it becomes impracticable and if not impossible to execute the scheme for the land stands notified for acquisition and everything comes to a stand still. It was for that precise reason that it was held by the Apex Court and this Court that period for which the stay remained in vogue should be excluded from computing the period of limitation and it is wholly immaterial whether or not a particular individual had obtained stay qua acquisition of his land or not.*"

It is, thus, held that the award passed in the present case is not violative of the provisions of Section 11-A of the Act.

Counsel for the petitioners has contended that some of the petitioners have constructed their houses which are of `A' class construction and, thus, the same are liable to be released from acquisition.

A perusal of the reply shows that the construction was raised against the provisions of the Periphery Control Act. The petitioners had not sought prior permission of the authorities for raising construction. It has been averred that the husband of petitioner No.1 was allotted a plot for construction of a house but instead of constructing the house, he sold the plot and thereafter raised illegal construction on the agricultural land against the provisions of the Periphery Control Act.

As the constructions raised by the petitioners were unauthorized and the constructions had been raised without seeking appropriate permission, therefore, the petitioners are not entitled to have their lands released from acquisition.

In view of the aforementioned findings, we find no merit in the writ petition and the same is dismissed.

**( ASHUTOSH MOHUNTA )**
**JUDGE**

**14.12.2006** **( NIRMAL YADAV )**
*rupi* **JUDGE**